

IN THE UNITED STATES DISTRICT COURT  
FOR THE WESTERN DISTRICT OF TENNESSEE  
WESTERN DIVISION

FILED BY                      D.C.  
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BELTANA TRANSPORT, and  
BRUCE E. POND,

**Plaintiffs,**

**v.**

ANDREW OBERLE and BELTANA  
TRANSPORT, LLC,

**Defendants.**

THOMAS M. GOULD  
CLERK, U.S. DISTRICT COURT  
W/D OF TN, MEMPHIS

**No. 05-2031 M1/P**

ORDER GRANTING PLAINTIFFS' MOTION FOR ATTORNEY'S FEES AND ORDER  
GRANTING PLAINTIFFS' MOTION TO WITHDRAW MOTION FOR WRIT OF  
EXECUTION

Before the Court is Plaintiffs' Motion for Attorney's Fees, Motion for Writ of Execution and Memorandum of Law and Fact in Support of Motions, filed September 2, 2005. Under Local Rule 7.2(a)(2) and Fed. R. Civ. P. 6, a response to the motion was due on or before September 19, 2005. To date, Defendants have not filed a response. On August 4, 2005, the Court filed an Order Granting Award of Attorney's Fees, and granted leave for Plaintiffs to file a fee petition for additional attorney's fees incurred in the motion for clarification and reply.

In its September 2, 2005, motion for attorney's fees, Plaintiffs submitted the sworn affidavit of Daniel C. Shumake,

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Plaintiffs' counsel, in support of their request for attorney's fees. (Pls.' Mot. for Attorney's Fees, Ex. D (Aff. of Daniel C. Shumake) ¶ 4.) Mr. Shumake's affidavit indicates that he charged an hourly rate of \$185.00 for his services and that staff from Mr. Shumake's firm spent a total of 18.65 hours in connection with the enforcement of the Order Granting Remand. (Id.)

The primary concern in an attorney's fee application is that the fee awarded be reasonable. Reed v. Rhodes, 179 F.3d 453, 471 (6th Cir. 1999) (citing Blum v. Stenson, 465 U.S. 886, 893 (1984))<sup>1</sup>. "The party seeking attorneys fees bears the burden of documenting [its] entitlement to the award." Reed, 179 F.3d at 472 (citing Webb v. Dyer County Bd. of Educ., 471 U.S. 234, 242 (1985)). A fee applicant is required to submit evidence supporting the hours worked and the rates claimed. Id. (citing Hensley v. Eckerhart, 461 U.S. 424, 433 (1983)).

Defendants have not responded to Plaintiffs' motion for attorney's fees. The Court finds that Plaintiffs have sufficiently documented their entitlement to an award of attorney's fees and that the amount of attorney's fees requested are reasonable. Accordingly, Plaintiff's Motion for Attorney's Fees is GRANTED. Defendants shall pay to Plaintiffs \$3,145.50 in

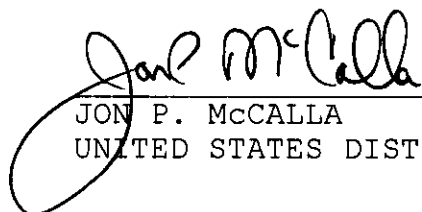
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<sup>1</sup> Although Reed involved a fee award pursuant to 42 U.S.C. § 1988, the Court finds its holding applicable to the instant case.

attorney's fees<sup>2</sup> as well as \$190.00 in costs<sup>3</sup>.

Also before the Court is Plaintiffs' Motion for Writ of Execution, filed September 2, 2005. Plaintiffs subsequently advised the Court that Defendants paid the attorney's fees ordered by the Court in its August 4, 2005, order, and on September 21, 2005, Plaintiffs moved to withdraw their motion for writ of execution. Accordingly, the Court GRANTS Plaintiffs' Motion to Withdraw Motion for Writ of Execution.

So ORDERED this 17 day of October, 2005.

  
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JON P. McCALLA  
UNITED STATES DISTRICT JUDGE

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<sup>2</sup> Plaintiffs cite to a number of figures in their motion and in their exhibits. Plaintiffs requested \$3,145.50 in the Motion for Attorney's Fees (Pls.' Mot. for Attorney's Fees ¶ 14). Accordingly, as the smallest figure cited and as the amount specifically requested, the Court grants Plaintiffs attorney's fees in this amount.

<sup>3</sup> The Court previously addressed this issue in its Order Granting Award of Attorney's Fees, entered August 4, 2005.



## Notice of Distribution

This notice confirms a copy of the document docketed as number 26 in case 2:05-CV-02031 was distributed by fax, mail, or direct printing on October 18, 2005 to the parties listed.

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Honorable Jon McCalla  
US DISTRICT COURT